

marks on the card for race 6 merely indicated his fancy as he was arrested after race 5.

Accordingly I allow this appeal, set aside the conviction and order the fine to be refunded.

Appeal allowed.

PUBLIC PROSECUTOR v. ER AH KIAT

[O.Cr.J. (Raja Azlan Shah J.) August 17, 1965]

[J.B. — Emergency Criminal Trial No. 30 of 1965]

Internal Security Act, 1960 — Statement by an accused person — Weight to be attached to such statement — Discovery of hand grenade as result of information given by accused.

Evidence — Statement by accused — Confession — Whether voluntary — Admissibility of.

The accused was charged for having under his control a hand grenade without lawful authority, an offence under section 57(1)(b) of the Internal Security Act, 1960. It appeared that the accused after his arrest was detained and questioned to obtain intelligence data for operational purposes. The accused gave information which led to the discovery of a hand grenade. Subsequently the accused made a statement to the police. This statement was attacked by the defence as not having been made voluntarily.

Held: (1) the admissibility of evidence that an accused person gave information which led to the discovery of a relevant fact is not related in any special way to the making of the confession and the fact of such discovery qualifies for admission any such statement or information which might otherwise be suspected on the ground of objection to the reliability of evidence of that type;

(2) in this case the fact of the discovery of the hand grenade fortified the truth of the cautioned statement of the accused;

(3) as the hand grenade was discovered in consequence of the statement of the accused this was evidence of his control even though the hand grenade was concealed in a public place, because unless he had control he could not have concealed it there;

(4) in this case considering the defence as a whole, the court was satisfied that the defence had not created a reasonable doubt as to the truth of the prosecution case but on the other hand had strengthened their case and therefore the court must find the accused guilty and convict him.

Cases referred to:—

- (1) *Thurtell and Hunt* (1824), Notable British Trials, pages 144 and 145.
- (2) *Queen v. Murugan Ramasamy* [1964] 3 W.L.R. 632 at p. 636.
- (3) *Emperor v. Chokhey* A.I.R. 1937 All. 497.
- (4) *Khoo Chye Hin v. Public Prosecutor* [1961] M.L.J. 105.

EMERGENCY CRIMINAL TRIAL.

B. T. H. Lee (Deputy Public Prosecutor) for the prosecution.

T. T. Rajah for the accused.

Raja Azlan Shah J.: The charge against the accused reads as follows:

"That you at about 12.00 noon on the 15th day of October, 1964 in the Security Area as proclaimed by the Yang di-Pertuan Agong vide F.L.N. 245 dated 17th August, 1964, namely Parit Sikon, in the District of Pontian, in the State of Johore, without lawful excuse had under your control ammunition, to wit, 1 hand-grenade without lawful authority and that you thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960".

The case for the prosecution is as follows:

Parit Sikon has been proclaimed a security area vide Federal Legal Notification 245 of 1964 with effect from 17th August, 1964.

On 5th October, 1964, the accused was arrested at a coffee-shop at Parit Sikon. On the following day he was taken to the Special Branch, Johore Bahru, where he was detained until 14th October, 1964, under the Internal Security Act, 1960.

It is common knowledge that Indonesians had landed and were in the Chuan Seng Estate area and that they had given hand-grenades to their helpers. Local suspects connected with the Indonesians had been arrested. The Special Branch, had every reason to believe that the accused was associated with these infiltrators.

During the period when the accused was under detention he was repeatedly questioned by A.S.P. Foo Eng Chuan (P.W.3) whose main purpose was to obtain intelligence data for operational purposes. P.W.3 denied that he ever threatened, assaulted or tortured the accused. The first information coming from the accused with regard to a hand-grenade was about two to three days prior to 14th October. On the evening of the 14th, the accused told P.W.3: "He said that he had buried the hand-grenade behind his house". This piece of evidence was not contradicted. As a result of this information accused was taken to Pontian police station on the following day. He was handed over to inspector Thomas Laang (P.W.6) who became the investigation officer in the case. From there, P.W.3, P.W.4, P.W.6, P.W.8, together with the accused and two police constables went to Parit Sikon. There accused led the party into a barber shop and to the rear portion of the shop. Accused opened the rear door and led the party to a coconut tree stump about 15 to 20 feet from the shop.

What happened there was not very clear. P.W.6 testified that accused pointed out to him a spot beside the coconut tree stump where he said he buried the hand-grenade. He was cross-examined in great detail. In cross-examination he said that in his report he merely stated the following words: "He (Er Ah Kiat) hid the hand-grenade". In his recorded statement he said he never used the words "He said".

P.W.4, the police photographer, in his evidence-in-chief said that the accused led them

to a place. There they spoke in Chinese which he did not understand. Accused led them to a place near a coconut tree stump. In cross-examination he said that he did not tell the police in his statement that "the accused pointed out the place where accused buried the hand-grenade".

P.W.8 said in evidence that accused pointed to a coconut tree stump. He did not say that "accused then pointed out the place where he had buried the hand-grenade".

It can therefore be gathered that there were three versions. Firstly, the accused pointed out a spot beside the coconut tree stump and he said he buried the hand-grenade there. Secondly, the accused pointed out the place where he buried the hand-grenade. Thirdly, the accused pointed out the spot. Whatever effect these three versions might have had upon the case I shall comment on later.

Be that as it may, a hand-grenade was unearthed by P.W.6. The hand-grenade was in a blue cloth inside a plastic bag which was contained in a glass jar. P.W.6 removed the detonator from the grenade. From there they returned to Pontian police station.

The hand-grenade and detonator were subsequently examined by Terence Anthony Keane, a staff sergeant of the Malaysian Ordnance Corps (P.W.1). He is an ammunition technician with 12 years' experience. He testified that the hand-grenade was of Chinese manufacture and was a copy of a Russian grenade known as F.1. It is of the high explosive, anti-personnel fragmentation type. Both items were servicable. After examining them the staff sergeant destroyed them and rendered a certificate of destruction (P.I.).

At the Pontian police station the accused made a statement to P.W.6 in the presence of P.W.7. This statement has been attacked by defence counsel as not having been made voluntarily. I have admitted the statement as a voluntary statement. The only question for me to consider with regard to this statement is how much weight I should attach to it. In other words, whether the statement is a true statement. In my opinion the fact of discovery of the hand-grenade lends colour to the truth of that statement.

The statement is self-incriminating. In substance it is as follows: Between September 5th and 24th, 1964, the accused had bought provisions for the Indonesian infiltrators. On September 24th an Indonesian gave him a hand-grenade which he subsequently put in a bottle and buried it behind his house. On October 5th he was arrested. On October 15th he led a police party to the place where a hand-grenade was unearthed beside a coconut tree stump.

That is the sum total of the prosecution's case. At the end of the prosecution case defence counsel submitted that they had not proved their case which, if unrebutted, would warrant the conviction of the accused. Firstly, counsel said that the information given by the accused to P.W.3 which led to the discovery of the hand-grenade is not a voluntary statement. In effect he contended that it was a confession given as a result of prolonged custody, repeated questioning, and the adoption of third degree methods by P.W.3 and Special Branch officers and therefore the confession was not voluntary. He contended that those facts leading to the information must be considered to ascertain whether the confession is a voluntary confession. He submitted that if it is otherwise, that would vitiate P.W.3's evidence.

In my opinion that is not a correct statement of the law. It would be sufficient for the present purpose to state a passage from the judgment of Park J. in the case of *Thurtell and Hunt* ⁽¹⁾ where he said:

"A confession obtained by saying to the party: 'You had better confess, or it will be the worse for you ...' is not legal evidence. But, though such a confession is not legal evidence, it is every day practice that if, in the course of such confession, the party states where stolen goods or a body may be found, and they are found accordingly, this is evidence, because the fact of finding proves the truth of the allegation, and his evidence in this respect is not vitiated by the hopes or threats which may have been held out to him".

That case was referred to with approval by Viscount Radcliffe in the Privy Council case of the *Queen v. Murugan Ramasamy*. ⁽²⁾ At page 637 his Lordship said:

"It is worthwhile to make the observation at this point that the reason given for allowing it to be proved that accused person gave information that led to the discovery of a relevant fact is not related in any special way to the making of a confession. It qualifies for admission any such statement or information that might otherwise be suspected on the ground of a general objection to the reliability of evidence of that type".

I think that sufficiently answers counsel's objection.

I may also refer at this stage to the application of counsel for the production of the written record of the information given by the accused to P.W.3 which led to the discovery of the hand-grenade. P.W.3 testified that the confirmation about the hand-grenade was on the evening of 14th October, 1964. He put this in writing but he said that he could not remember the exact question asked. Counsel applied that this written record be produced. I disallowed the application on the ground that it was in substance a police diary. As such, it can only be used for the purpose of refreshing P.W.3's memory. If this was done, counsel would then be entitled to refer to that for purposes of contradiction. Since P.W.3 did not refer to this

written record by way of refreshing his memory, the point does not arise. I therefore refused counsel's application.

Counsel also submitted that the hand-grenade was found in a public place and accordingly the accused had no exclusive control over the place, hence the hand-grenade. In my view, if the hand-grenade was discovered in consequence of the statement it would be evidence of his control even though the hand-grenade is concealed in a public place because unless he had control he would not have concealed it there. In *Emperor v. Chokhey* ⁽³⁾ the accused had said: "I have buried the gun at such and such a place", and the court held that the whole of this statement was admissible and the statement and the fact of the accused having taken the sub-inspector to the place indicated and having unearthed a gun established his possession of and control over the weapon. True enough the gun was recovered from the railway premises within the railway fencing, but the court held that the accused had taken the precaution of burying it, and although the place was accessible to the public and the path was running close by, no member of the public could have ordinarily got at the gun inasmuch as it was concealed from view, whereas the accused could have access to it at opportune moments, therefore in the eyes of the law he must be deemed to be in possession and control of the gun.

The statement and the fact of the accused having led P.W.6 and the police party to the spot indicated and P.W.6 having unearthed the hand-grenade established that the accused had control over the weapon. He had taken the trouble of preserving the hand-grenade in two separate covers and putting them in a screw-capped glass jar; he had taken the precaution of burying the glass jar and although the place is outside his house, which is about 15 feet to 20 feet away, as no member of the public could have ordinarily got at the hand-grenade inasmuch as it was concealed from view, whereas the accused could have access to it at opportune moments, therefore in law he must be deemed to have control over the hand-grenade.

Counsel also submitted that the cautioned statement is not worth a moment's glance. He contended that the evidence of P.W.6 cannot be relied upon in view of his inconsistent evidence compared to that of P.W.4 and P.W.8 as to what had been said or omitted to have been said at the spot where the hand-grenade had been found, and the evidence of P.W.7 as to what happened in the recording room. He said that those inconsistencies would affect the general credibility of P.W.6's evidence with regard to the taking of the cautioned statement. In my opinion, discrepancies there might have been, but such discrepancies, inconsistencies, and demonstrable

A falsehoods by the prosecution witnesses are not sufficient reason for rejecting the whole of P.W.6's evidence. No doubt his evidence must be looked at with suspicion and treated with caution, but to say that it should be entirely rejected would be going too far: see *Khoon Chye Hin v. Public Prosecutor*.⁽⁴⁾

B What it boils down to is that whatever weight I may give to the cautioned statement must be carefully scrutinised. Bearing this in mind, I am satisfied that the cautioned statement is true and that, fortified by the accused's statement leading to the fact of the discovery of the hand-grenade would, in my opinion, be overwhelming evidence which, if unrebutted, would warrant his conviction. As was said by Park J. in *Thurtell and Hunt, supra*, the fact of finding proves the truth of the allegation.

In the circumstances I am satisfied that the prosecution has proved its case.

D The accused elected to make a statement from the dock. I have to consider his defence which may have one of three results: it may convince me of his innocence, or it may cause me to doubt the truth of the prosecution case, in which case the accused is entitled to an acquittal, or E it may, and sometimes does, strengthen the case for the prosecution.

The accused stated that he was arrested on 5th October, 1964. He was taken to the Special Branch, Johore Bahru, on the following day. From 7th to 12th October he was interrogated every night and sometimes during the day about the hand-grenade. On 13th October he was given third degree methods by Special Branch officers until day-break and it was not until the evening of the 14th October when he could not stand further beating, that he said: "As to where the hand-grenade is, I know". He also said that he was forced to admit ownership of the hand-grenade.

H He admitted making the statement but denied that the caution was administered to him. He said that it was not made voluntarily and that the Special Branch officer told him to make the statement properly. P.W.6 was in military uniform, and that frightened him. He said that as he had been beaten and threatened and was also in fear he gave any statement at random, disregarding whether it was true or untrue. He denied that he had any dealings with Indonesians. As to the knowledge of the hand-grenade, he said that that was purely something told to him by a friend. The reason that he did not make any report to the police was because he could not betray a friend and, secondly, because the police might turn round and accuse him of owning the hand-grenade.

Accused alleged that he made a statement

at random, not caring whether it was true or not, through overwhelming fear. Does that necessarily mean that he invented something that never happened? In his statement he not only admitted that the hand-grenade was given to him by an Indonesian, but he describes it with a fair amount of detail. If it were an invention on his part, it is hard to believe that he could go into details unless he had dealings with those Indonesians. I do not think a person would jeopardise his life to such an extent as the accused did unless it is true.

Accused also said that the hand-grenade was something told to him by a friend. We do not know who his friend is or what is his name. Accused said he would not betray his friend. We may ask ourselves if in times of emergency a citizen would betray his country rather than betray a friend.

Considering the defence as a whole, I am not satisfied that the defence has created a reasonable doubt as to the truth of the prosecution case. On the other hand, his defence strengthens the prosecution's case.

I therefore find him guilty and convict him.

Accused found guilty.

KOH SENG WAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) August 18, 1965]

[Singapore — Magistrate's Appeal No. 37 and 45 of 1965]

Penal Code, s. 408 — Criminal breach of trust by servant — Sentence manifestly inadequate.

The appellant appealed against his conviction for criminal breach of trust as a servant. The evidence showed that the appellant as sales representative of a motor company utilised his position and authority therein to divert goods to the value of \$18,000 belonging to the firm to recipients falling outside the scope of his authority with considerable cunning and resourcefulness. The appellant had been sentenced to six months imprisonment and the Public Prosecutor cross-appealed against sentence.

Held: on the facts the appellant was rightly convicted but as the sentence was manifestly inadequate having regard to the degree of cool and calculated resolution revealed in the perpetration of the frauds, the sentence should be increased to one year's imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Edwin J. d'Souza for the appellant.

Tan Boon Teik (Solicitor-General) for the respondent.

Winslow J.: The appellant was originally charged with having committed criminal breach of trust of certain diesel engines, spare-parts and cash amounting to a little over \$18,000, being the property of Cycle & Carriage Co., Ltd., between February and May 1964. This composite charge was amended into five charges at the end of the prosecution case dealing separately

A with criminal breach of trust of the proceeds of sale of the same diesel engines and with criminal breach of trust of the spare-parts respectively. The appellant declined to recall any witness and remained silent on being called upon to make his defence. He was convicted accordingly and had nothing to say in mitigation of sentence. He was sentenced to six months' imprisonment on the main charge relating to criminal breach of trust of a sum of \$16,600 obtained on the sale of 8 engines, and one month concurrently in respect of each of the spare-parts set out in the remaining four charges. These involved comparatively much smaller sums.

C The appellant, in my view, was correctly convicted on these charges which were substantiated by the evidence which clearly showed that, whilst employed as sales representative of the firm in question, he utilised his position and authority therein to divert goods belonging to the firm to recipients falling outside the scope of his authority with considerable cunning and resourcefulness. In most cases he caused goods to be delivered against fictitious confirmation orders to persons other than those named therein and converted the proceeds thereof. In one case he purported to fulfil an order placed by a non-existent firm. The scheme adopted by him appears to be so clearly premeditated in its flagrant abuse of the special confidence placed in him by the firm and his fellow-employees as to leave no room for doubt that he was never the victim of any sudden temptation nor is there any suggestion in the evidence that his employer or other members of the staff were either so negligent or inefficient in the performance of their duties as to invite the criticism that they either encouraged or facilitated these offences by reason thereof.

G In other words I can find no mitigating circumstances in the appellant's favour apart from the fact that this is the first time he has been convicted.

H Even taking the latter into consideration I still consider that the sentence imposed was manifestly inadequate having regard to the degree of cool and calculated, if not brazen, resolution revealed in the perpetration of these frauds which were spread over a period of about 4 months in circumstances where he must have known that they would sooner or later be discovered. Luckily for the firm and unluckily for him his fraud came to light much earlier than he probably expected. The fact remains that meantime he had caused a loss to the firm of over \$18,000. Whilst the quantum of loss does not necessarily determine the degree of culpability involved I must take into consideration the factors to which I have referred relating to the state of mind with which and the period during which the offences were committed. The